HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.12651 OF 2007

Between:

Akkineni Textiles Limited, rep., by its
A. Sethu Rama Rao, House No. 60-3-8,
Ramachandra Nagar, Vijayawada-520 008
and nine others

…Petitioners

AND

State Bank of India, rep., by its
Assistant General Manager,
Mr. V. Satya Murthy, Patamata Lanka
Branch, Patamata, Vijayawada,
Krishna District and another

...Respondents

: O R D E R :

Counsel for the petitioners : Shri Ravi Kumar for
Shri K.S.N. Murthy
Narusu

June 19, 2007

Per G.S. Singhvi, CJ

The petitioners, who owe a debt of more than Rs. 10 crores as on today to the State Bank of India (for short, 'the Bank'), have

invoked the jurisdiction of this Court under Article 226 of the Constitution of India for quashing order dated 28.3.2007 passed by Debts Recovery Tribunal, Visakhapatnam (for short, 'the Tribunal') in I.A No.113 of 2004 in O.A No. 51 of 2004.

It is borne out from the record that on account of failure of the petitioners to repay the loan, the bank filed an application in the year 2004 before the Tribunal under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short, 'the Act') for recovery of Rs. 9,73,88,348/- along with interest (current and future).

During the pendency of the main application, the bank filed two miscellaneous applications, one for preparation of the inventory of the properties of the petitioners and the other for sale of a part thereof for recovery of the outstanding dues. The Tribunal allowed both the applications. The petitioners have not questioned the order passed by the Tribunal regarding preparation of inventory etc., but have prayed for quashing order dated 28.3.2007 passed in I.A.No.113 of 2004. The relevant portions of that order are as under:

"Initially after filing of the application one Mr.S.Mallikarjuna Sharma was appointed as Commissioner for taking inventory. The said Commissioner filed a report on 23.6.04 and in his report it is stated that certain items did not belong to the bank.

For this application, the respondent filed a counter stating that the Item No.1 to 4 of A schedule property have been imported under special contract but the machinery after installation shall produce textiles and finished products will be exported to any foreign country for the purpose of the Central Govt. to raise foreign exchange and the Central Govt. and the first respondent has entered into a bond with the President of India that he will be bound to sell the finished product for gaining foreign exchange and it is a 100% export oriented unit and for this purpose, it is stated that the Tribunal has no jurisdiction to direct either the Central Govt. or the President of India or Customs and Central Excise Department and it is suggested that the petitioner ought to have agitated before the Hon'ble High Court.

It is also stated that there is an Officer not below the rank of Central Excise Inspector who will be supervising the R.1 industry will not permit 3rd parties without prior permission of the Asst. Commissioner of Customs and Central Excise, Divisional Office, Vijayawada. Therefore, the petitioner before applying to the Tribunal ought to have obtained prior permission as

per the custom and excise rules.

It is also the contention of the R1 that the conditions of the bond given by R1 provide that the machinery being imported is covered by the Customs Act under the supervision of Customs Officer and the machinery will not be interfered since custom duty on the machinery as per se possession of imported goods and machinery cannot be shifted to any other place except to an authorised place and therefore, for the purpose of inventory the Commissioner of Customs may grant permission to the petitioner bank and such permission has to be filed before the Tribunal. It is also stated that it is the obligation of R1 company that the strict conditions have been incorporated in the bond in view of the export and import policy and therefore, it is beyond control of the respondents that any 3rd party may seek for inventory of the said machinery which cannot be removed to any other place. It is also stated that the bond given by R1 has been given for performance of an act to supply the finished produce and to sell to foreign countries in which the country will be earning foreign exchange and that if permission is given which will be jeopardizing the R1 company. It is also stated that the petition was partly admitted and the petition is worked out after learned Commissioner filed his report in IA 113/04 and is therefore closed and this Tribunal is functus officio. It is stated that the petitioner has to file a separate petition for selling of the machinery. It is stated that all the machinery is imbedded in earth and therefore, they have proceeded with sale as provided for sale of immovable property. The imported machinery cannot be sold without prior permission of the custom authority since the said machinery was imported under the customs policy of the government to acquire foreign exchange. It is stated that the said machinery cannot be shifted from the place in which it is installed. It is also stated that a couple of 100 employees are working in the mill who will be thrown out of the job. It is also stated that some other machinery belonging to R1 and hypothecated to Mr.S. Mansukhlal & Co., Mumbai, petitioner bank cannot sell these goods to the 3rd parties.

The copy of the bond is filed in the Tribunal which shows that the Central Govt. has granted industrial licence for setting up 100% EOU for the manufacture of goods for export out of India on the terms and conditions stipulated in the letter of intent dated 9.7.96 and accepting the terms and conditions this bond was executed by R1 and this was nothing to do with the granting of loan by the bank and the hypothecation in favour of the bank, whatever the material that is hypothecated that may be brought to sale according to law as the defendants/respondent No.1 did not pay the dues to the applicant bank. The contentions of the respondent in the counter cannot be accepted as they are untenable.

The Bank is entitled to exercise its rights and in these circumstances, I see no reason why the hypothecated property cannot be sold and if the property is left unattended, the value of the property will be deteriorated day by day and the first respondent is not paying any amounts to the applicant bank. In these circumstances, I appoint Sri S. Mallikarjuna Sharma, Advocate to sell away inventorised property in public auction and

credit the proceeds to the Tribunal by giving wide publicity and sufficient time for sale and shall report by 30.4.2007.

Shri Ravi Kumar, learned counsel for the petitioners argued that the impugned order is liable to be declared nullity and quashed because the Tribunal did not have the jurisdiction to order sale of the properties of his clients during the pendency of the main application. He submitted that if the properties of the petitioners are sold, nothing would survive for adjudication in the main application.

We have considered the submissions of the learned counsel, but have not felt persuaded to agree with him. Although we are prima facie of the view that the order under challenge falls within the ambit of Section 19 (18) (e) of the Act, we do not consider it proper to express final opinion on this point, because we are convinced that the writ petition is liable to be dismissed on the ground of availability of an effective alternative remedy of appeal to the petitioners under Section 20 of the Act. A conjoint reading of Section 20 (1) and (2) makes it clear that any order made or even deemed to have been made by the Tribunal is appealable before the Appellate Tribunal having jurisdiction in the matter except when such an order is made with the consent of the parties. The limitation for filing an appeal is 45 days from the date of receipt of a copy of the order of the Tribunal.

It is settled law that in exercise of power under Article 226 of the Constitution, the High Court will not entertain writ petition if an effective alternative remedy is available to the petitioner. In **A.V. Venkateshwaran v. R.S. Wadhwani**[1], the Constitution Bench of the Supreme Court, while reiterating the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, exhaust the other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition, but is a rule evolved by the Courts for the exercise of their discretion, observed as under:

> "The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art.226 of

the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Art. 226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

In **Thansingh Nathmal v. Superintendent of Taxes**[2], another Constitution Bench of the Supreme Court considered the question relating to exercise of discretion by the High Court in entertaining a writ petition despite the availability of alternative remedy and held:

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench

upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

In **Baburam v. Zilla Parishad**[3], the Supreme Court reiterated the rule of alternative remedy in the following words:

"When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

Their Lordships then carved out the following two exceptions to the rule of alternative remedy:

1) where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution,
2) where the impugned order has been made in violation of the rules of natural justice.

In **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[4], the Supreme Court stated the rule of alternative remedy in the following words:

" Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute alone must be availed of. Under the scheme of the Orissa Sales Tax Act, there is a hierarchy of authorities for granting redress. The petitioners had an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority

under sub-section (1) of Section 23, then a second appeal to the Tribunal under sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. The Act provides for an adequate safeguard against an arbitrary or unjust assessment, such as right to prefer appeal under Section 23 (1) and to apply for stay of recovery under clause (a) of the second proviso to Section 13 (5). Thus the Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226."

In **Champa Lal v. I.T. Commissioner**[5], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[6], **C.I.T. v. Ramendra Nath Ghosh**[7], **Swadeshi Cotton Mills Co. Ltd., v. Govt. of U.P.**[8], **Gujarat University v. N.U. Rajguru**[9], **State of H.P. v. Raja Mahendra Pal**[10], **L.L. Sudhakar Reddy v. State of A.P.**[11], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[12], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[13], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[14] the Supreme Court applied the rule of alternative remedy in different situations. I n **Harbanslal Sahnia** (supra), the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

"The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: *i*) where the writ petition seeks enforcement of any of the fundamental rights; (*ii*) where there is failure of principles of natural justice; or (*iii*) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1}**. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be

terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

In **Central Coalfields Ltd. v. State of Jharkhand**[15], the Supreme Court approved the judgment of the High Court of Jharkhand, which refused to interfere with the order passed by the competent authority under the Bihar and Orissa Public Demands Recovery Act, 1914 on the ground of availability of alternative remedy and observed:

> "……It is no doubt true that according to the appellant Company the certificate proceedings could not have been initiated under the Bihar and Orissa Public Demands Recovery Act, 1914, in view of the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Mines and Minerals (Regulation and Development) Act, 1957 and also the Coking Coal Mines (Nationalisation) Act, 1972. But it also cannot be overlooked that the action has been taken under the Bihar and Orissa Public Demands Recovery Act, 1914 and the appellant Company was directed to make payment. The said order is subject to appeal under Section 60 of the said Act. A reading of the order dated 17-11-1999 passed by the Certificate Officer makes it clear that before taking the action, an opinion of the Advocate General of the State of Bihar was sought by the respondent. Referring to the provisions of the Coking Coal Mines (Nationalisation) Act, 1972, the Advocate General opined that such amount could be claimed by the State Government from the appellant Company. Reference was made to Sections 6 and 7 of the said Act and it was observed that the State Government had power to make demand of rent from the appellant Company. In view of the above position, it cannot be said that the learned Single Judge as well as the Division Bench had committed an error of law in dismissing the petitions and appeals by allowing the appellant to avail of an alternative remedy of filing appeals……"

Learned counsel for the petitioners could not show that the remedy available to the petitioners under Section 20 (1) of the Act is not an effective alternative remedy. Therefore, we do not see any reason to make a departure from the rule that the High Court will not entertain petition under Article 226 of the Constitution if an effective alternative remedy is available to the petitioner/s.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No. 15795 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

June14, 2007
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[1] AIR 1961 SC 1506
[2] AIR 1964 SC 1419
[3] AIR 1969 SC 556
[4] (1983) 2 SCC 433
[5] AIR 1970 SC 645
[6] AIR 1970 SC 1980
[7] (1972) 4 SCC 379
[8] (1975) 4 SCC 378
[9] AIR 1988 SC 66
[10] (1999) 4 SCC 43
[11] (2001) 6 SCC 634
[12] (2002) 1 SCC 216
[13] (2003) 2 SCC 107
[14] (2004) 3 SCC 553
[15] (2005) 7 SCC 492